Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CC Docket No. 98-67 and CG Docket No. 03-123
Petition for Declaratory Ruling on Video Relay Service Interoperability	)	

National Association of the Deaf
Comments on Relay Service Interoperability

Kelby Brick, Esq.
Director, Law & Advocacy
National Association of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910

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I. Introduction

The National Association of the Deaf (NAD) hereby submits its comments to the Federal Communications Commission (FCC) in response to Public Notice, DA No. 05-509, released March 1, 2005, inviting comments in response to the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) Petition seeking a Declaratory Ruling on Interoperability.

Established in 1880, the NAD is the oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of 28 million deaf and hard of hearing individuals in the United States of America. The mission of the National Association of the Deaf is to promote, protect, and preserve the rights and quality of life of deaf and hard of hearing individuals in the United States of America. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights and technical assistance, policy development and research, and youth leadership development. The NAD works closely with other deaf-related consumer based national organizations and is a member of

several coalitions representing the interests of deaf, hard of hearing, late-deafened and deaf-blind individuals.

The focus of the following comments represents the position of the NAD on the issues specifically raised by the petition -- interoperability and compatibility of video relay services (VRS) and products. The NAD notes, however, that these issues impact relay services and products in all forms.

The NAD has always taken a strong position in favor of open interoperability in communication systems — dating back to the issue of interoperability of text messaging systems. Most recently, at the 2004 NAD Conference in Kansas City, Missouri, delegates passed as one of the Conference's priorities, a resolution that the NAD advocate for VRS to become a mandated telecommunications services with quality assurances — including interoperability.

The NAD appreciates the fact that competing technologies now allow companies to develop faster, better and more user-friendly equipment and services that brings deaf and hard of hearing consumers closer to true functional equivalency. However, the lack of interoperability among relay services and products is now requiring consumers to juggle different products/devices—each of which have their own software and connectivity protocols.

Deaf and hard of hearing individuals should be able to use relay anytime with anyone using any relay provider, just as two persons who can hear, can call each other, regardless of their telephone product or service provider.

Video and other Internet relay services and products have become valuable tools for deaf and hard of hearing individuals. However, these services have severe limitations because they are not compatible among everyone who is able to use them. Numerous individuals are prevented from having access to certain relay services and products either because of a lack of interoperability or

because of blocking practices. [1] This is inconsistent with the Americans with Disabilities Act's (ADA's) statutory requirements, as well as Congressional intent in establishing relay services.

The NAD strongly believes the FCC should issue a ruling that requires relay products and services to be backwardly compatible and interoperable, as defined by a set of FCC-prescribed standards that will apply across all relay providers. Such standards should be all encompassing, and yet flexible enough to encompass existing and future technologies (whether it is video, Internet any other new form of relay that is developed in the future). To ensure that compatibility and interoperability goals are achieved, the FCC will also need to take steps to prohibit blocking practices.

II. The FCC should require that relay products and services be interoperable and backwardly compatible in accordance with FCC-prescribed standards.

Over the past year, the NAD has received numerous complaints from deaf and hard of hearing customers about having to stockpile various relay products in order to be able to access multiple relay providers or even to communicate with each other.[2] This has led to tremendous confusion among consumers.[3] Title IV of the ADA requires that in order to "make available to all

[1] Current blocking practices by certain providers, products and services include:

a) Blocking calls from a deaf or hard of hearing consumer to another relay provider;

b) Blocking calls from another relay provider to a deaf or hard of hearing consumer (when a hearing consumer initiates the call to a relay provider); and

c) Blocking calls from a consumer using a relay product (i.e. video phone) and its established directory information system to another consumer using a similar relay product, but without the involvement of any relay provider. This requires consumers to circumvent this blocking by utilizing a complicated and technical process of acquiring the other party's current (and frequently temporary) domain name system data, resource record and Internet protocol location.

[2] For example, a consumer stated to the NAD that "Now, just about everybody is getting a D-link (videophone) installed. My folks have a D-link and a Sorenson VP100 on top of their TV." Contrast that to numerous other consumers who have contacted the NAD desperately begging for video products which would enable access to video relay services—saying that they have repeatedly asked providers for such equipment and have been told that they are on long waiting lists. Those consumers have stated that their incomes do not allow them to spend several hundred dollars for the purchase of several types of video products that will enable them to call everyone.

[3] For example, another consumer commented to the NAD: "I sure hope this craziness is straightened out before it gets out of hand. I sure like [VP100] features in dialing a phone number instead of going through the IP name route and hope ultimately we can call VRS as well as friends by simply dialing a phone number. The IP route is tough

individuals in the United States a rapid, *efficient* (emphasis added) nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most *efficient* manner, to hearing-impaired and speech-impaired individuals in the United States."[4] The confusion and uncertainty now being experienced by relay users is inconsistent with this Congressional mandate.

The FCC should issue a ruling that requires relay products and services to be backwardly compatible and interoperable in accordance with FCC-prescribed standards. This ruling should be encompass all modes of communication used in relay services, and should be periodically reviewed and updated to incorporate new standards (whether it is video, Internet, or any other new form of relay that is developed in the future). Technological innovations are constantly evolving.

Strong and forward-looking rules requiring relay products and services to be interoperable and compatible will assure consistency in the provision of relay services. Standards are needed to ensure maximum choice by consumers across service providers as time goes on. In establishing relay rules for interoperability and compatibility, the FCC should look at the "whole picture," to determine how our nation's telecommunications policies can best serve deaf and hard of hearing individuals. Failure to promulgate rules on interoperability will require petitions every time a company comes out with a new product or service. This will put a tremendous burden on both consumers and the FCC. This also creates ongoing and unlimited opportunities for unfair market conditions for deaf and hard of hearing individuals, by exploiting their need for access to telecommunication networks.

By establishing a rule that applies to existing and future products and services, the FCC will encourage providers to promote innovation, research and development within established parameters.

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way for grass rooters to go and I had to be taken by the hand via [name withheld]'s instructions and [another name withheld] and my son's guidance via e-mail to figure this out. It's like a throw back to the railroad days with different railroad companies having different track sizes."

[4] 47 U.S.C. §225(b)(1) (emphasis added).

Lack of clear parameters will result in incompatible systems not unlike the early days of the railroads when the emerging railroad industry had different sized railroad tracks. Clearly articulated rules will also enable providers to know in advance what rules will apply when developing and rolling out new services or products.

The FCC should require that all relay products and services be *interoperable and backwardly compatible under FCC-prescribed standards.* The standards itself will need to be reviewed and upgraded as technology improves. Without frequent reviews and updates, relay customers could easily be relegated to the dark ages as technology progresses and evolves.[5]

III. The FCC has both the authority and the responsibility to require compatibility and interoperability of relay products and services.

A. Title IV of the Americans with Disabilities (ADA) requires functional equivalency for all forms of relay services.

When Congress passed the ADA, it specifically required that the FCC set forth requirements, guidelines and operational procedures[6] that would allow deaf and hard of hearing individuals to communicate with hearing individuals with essentially the same ease used when two hearing individuals would communicate with each other.[7] Congress also specifically stated that relay services should encompass terminal devices in addition to and other than TDDs (hereinafter called TTYs)[8]. Congress also required that such services be made "available to all individuals in the United States a rapid, efficient nationwide communication service…to the extent possible and in the most efficient manner."[9]

[5] Consider, for example, the nation's antiquated Baudot code system for TTYs.

[6] 47 U.S.C. §225(d)(1)(a).

[7] 47 U.S.C. §225(a)(3).

[8] Ibid.

[9] 47 U.S.C. §225(b)(1).

Congress clearly envisioned a telecommunication system beyond TTYs that would provide deaf and hard of hearing individuals with the equal ability to make calls to anyone, at anytime. This also includes the equal ability to receive calls from anyone, at anytime, and from anyplace. Congress also foresaw that deaf and hard of hearing individuals would be using new telecommunication services products beyond TTYs.

When the mandate for relay services was first implemented, deaf and hard of hearing individuals relied on TTYs as their main device for making and receiving calls. However, consumers are rapidly moving beyond TTYs to newer devices and services, such as videophones and instant messaging applications. Unfortunately, at the same time, they are rapidly losing the ability to make or receive calls to and from anyone, at any time and at any place.

While Congress envisioned that relay services might need to extend to new kinds of hardware and software equipment; it never intended for relay customers to give up their ability or right to equal access to services in exchange for better, different, or newer devices.

Functional equivalency for deaf and hard of hearing individuals as mandated by the ADA should not be diminished merely because our nation's communications services are shifting to the Internet. The FCC has recognized this and has taken actions to apply traditional telecommunication rules to Internet communications used for telecommunications purposes. For example, the FCC has already recognized that Internet relay functions in a similar manner as TTY based relay "except that instead of a TTY…a computer or other Internet enabled device" is used.[10] In approving Internet relay, the FCC commented "Congress did not narrow its definition of TRS only to a specific category of services . . .such as 'telecommunications services' in contradistinction to 'information services.'"[11]

[10] Footnote 174, IP Enabled Services, WC Docket No. 04-36, FCC 04-28, Notice of Proposed Rulemaking, released March 2004.

[11] Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67 (April 22, 2002) at ¶10.

Rather, Congress wanted the FCC to consider whether a given service provided a "specific functionality" - i.e., whether a service provided the ability for an individual with hearing loss to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of a person who does not have hearing loss to communicate using voice services. Video and instant messaging relay are two forms of Internet relay that can accomplish this result in place of TTYs.

Deaf and hard of hearing individuals should also be able to receive relay calls as easily as they should be able to initiate relay calls. With the advent of video relay, individuals who can hear are effectively being blocked from using any provider they choose when they try to call deaf and hard of hearing individuals.[12] As a result, deaf and hard of hearing individuals are missing calls intended for them, not realizing that certain relay products and services are blocking calls. This practice runs contrary to statutory access requirements.

The ADA requires the FCC to establish rules to ensure that customers (whether they are deaf, hard of hearing, or hearing) can make and receive calls using all available forms of relay without interference or blocking. In order to achieve this, the FCC must create rules that clearly define interoperability and compatibility, so that all relay services and products conform to the same standards.

B. Video and other Internet relay providers should be treated like common carriers and thus required to comply with common carrier requirements for providing communication services and accessibility.

All video and Internet relay providers, including those that provide relay services via instant messaging, must be required to comply with rules applicable to common carriers prior to being

[12] Individuals who can hear may have been given a deaf or hard of hearing individual's videophone contact information. Those people who can hear would later try looking up video relay services on the Internet and utilizing the first provider's number that comes up. The caller would call relay and give the deaf or hard of hearing person's videophone contact information. If the videophone contact information were not publicly accessible, the caller would be informed that the call couldn't be connected.

eligible to being reimbursed by receiving Interstate TRS funds administered under the direction of the FCC by the National Exchange Carrier Association (NECA). Relay regulations require the FCC to implement rules that prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services.[13] Congress expected the FCC to implement rules requiring relay providers to conduct themselves as common carriers.

FCC rules specifically state "[i]t shall be the duty of every common carrier…to furnish such communication service…[and] to establish physical connections with other carriers."[14] This means that relay providers need to be proactive in establishing connections with and among other providers and customers. To provide relay products and services that are not interoperable and compatible with other providers' products and services is tantamount to preventing actual connections—the opposite of what is required.

FCC rules also "prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls."[15] Video providers that block calls between customers when they are made through other providers are in essence refusing calls made by callers. This blocking of calls is in violation of rules prohibiting the refusal of any relay calls

Sections 201, 202, 225, and 251 require relay providers to operate open, interoperable and compatible systems and utilize products that are open, interoperable and compatible with other similar products, providers and services.[16] To allow relay providers to employ blocking practices is unjust and unreasonable.

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[13] 47 U.S.C §225(d)(1)(E).

[14] 47 U.S.C. §201(a).

[15] 47 U.S.C. §225(d)(1)(E).

[16] Relay services that use proprietary instant messaging also block users of other text messaging platforms from accessing relay. The NAD believes that this also violates §201 and §225. Although the NAD, however, recognizes that this might be beyond the scope of CCASDHH's petition, the NAD encourages the FCC to be proactive and implement rules that will be fairly applied across all relay services.

C. Business practices implemented by relay providers are similar to those implemented by Madison River Telephone Company, LLC, and should be fined.

On March 3, 2005, the FCC levied a fine on Madison River Telephone Company, LLC under authority of Section 201(b) for blocking ports, because this was found to deny access to telecommunication services by IP telephony providers. Certain relay providers are restricting deaf and hard of hearing customers' access to the nation's telecommunications networks. Relay providers' blocking of consumer calls to and from other providers is the same as Madison River's blocking of ports: both deny customers access to telecommunications networks. Indeed, the FCC can simply substitute "video relay service" for "voice service" in the Madison River case and see that relay providers are doing the same thing that for which Madison River was fined.

Section §201(b) states, "All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable." Madison River's blocking practices were found to be unjust and unreasonable. When relay providers block calls or implement similar practices, whether through the distribution of products that are not interoperable or the operation of closed networks, relay providers are also blocking communication services and thus preventing access to telecommunication networks. This practice, as with the practice of Madison River, should be prohibited as unjust and unreasonable.

In arriving at the Madison River decision, former Chairman Powell stated "the industry must adhere to certain consumer protection norms if the Internet is to remain an open platform for innovation."[17] It is critical for the FCC to act decisively to ensure that relay providers utilizing the Internet are required to adhere to similar norms. The open platform of the Internet is consistent with Powell's vision of "Internet freedom."' As Powell explained, when a company intentionally breaks a

[17] Chairman Michael Powell statement, March 3, 2005.

consumer's connection to the Internet, that company "violates the openness that consumers have come to expect."[18]

In Madison River, the FCC acted "swiftly to ensure that Internet voice service remains a viable option for consumers."[19] It would be contrary to statutory requirements if relay customers were not given protections that are functionally equivalent to those given voice service customers. Accordingly, sanctions should be imposed on relay providers who break a customer's connections (through blocking and preventing access) to others via the Internet — and violate the openness that customers have come to expect.

D. Telecommunication relay products and services should comply with Sections 251 and 255.

Section 255 of the Communications Act requires that all telecommunications hardware and software equipment be accessible and compatible with other telecommunications hardware and software equipment .[20] This should include specialized customer premises equipment (SCPE) and ordinary customer premises equipment (CPE) that are used and distributed by relay providers.

The FCC has already identified TTYs as SCPE.[21] The volume of TTY relay calls has experienced a rapid decline, probably as a result of the advent of Internet-enabled relay services and CapTel service. As previously mentioned, computers, videophones, and other Internet enabled devices are rapidly replacing TTYs as the SCPE preferred by deaf and hard of hearing individuals. Because computers, videophones, and other Internet devices used with Internet-enabled relay services are the new replacements or substitutes for TTYs; these too should now be recognized by the FCC as CPE or SCPE.

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[18] Ibid.

[19] Ibid.

[20] 47 U.S.C. §255.

[21] FCC Consumer Facts: Section 255, Telecommunications Access for Persons with Disabilities. Also seen at http://www.fcc.gov/cgb/consumerfacts/section255.html.

Section 251 of the Communications Act also requires that network architecture "be designed in a way that does not hinder access by individuals with disabilities. Network architecture covers the public switched network, and includes hardware or software databases associated with routing telecommunications services in our nation."[22] Section 251 prohibits carriers from installing network features, functions, or capabilities that hinder the accessibility and compatibility features that are required by Section 255. Since relay providers must comply with common carrier obligations for accessibility and compatibility, relay providers should also be required to comply with Section 251. They should *not* be permitted under this section to keep their networks closed.

The FCC has recognized TRS as a service intended to provide deaf and hard of hearing individuals "equal access to the telecommunications network;" it was for this reason that the FCC has authorized two Internet-enabled services, Internet relay and VRS. Accordingly, SCPE (such as text terminals and video phones) that are used to provide equal access to telecommunication networks (through relay) must be open, accessible and compatible with other providers and SCPE.

Relay providers currently violate Section 251 and 255 to the extent that their products and services prevent open access, interoperability and compatibility. Closed networks unfairly discriminate against relay service users because they deny them the same level of service that voice telephone users have. The FCC should require all products and services, including videophones, being used (or distributed) by relay providers to be compatible with FCC-prescribed standards on interoperability. To carry this out, the FCC should also prohibit blocking practices by relay products and services.

[22] Ibid.

E. FCC rulings on January 26, 2005 establish a foundation for requiring interoperable and compatible relay services and products.

The FCC's rulings on January 26, 2005, took a significant step toward requiring relay services and products to be open, interoperable and compatible. [23] However, the FCC did not go far enough. The FCC should take the next logical step to provide a fully open, interoperable and compatible relay network.

The FCC's rulings make it clear that providers cannot implement practices that "have the effect of requiring the consumers to choose a single VRS provider."[24] The FCC has also ruled that "VRS consumers cannot be placed under any obligation to use only one VRS provider's service."[25]

Relay providers receiving Interstate TRS Funds must make their products and services available to any and all customers. Customers are not only deaf and hard of hearing callers, but also hearing callers who call deaf and hard of hearing individuals via relay. VRS customers who can hear should be able to utilize any provider to call a deaf person.

Providers that block calls from other providers to certain equipment in a closed network have in essence placed the hearing customer under an obligation to use that specific provider's service. This obligation is inconsistent with the FCC's January 26 rulings disallowing customers from having the obligation to use only one VRS provider. The FCC should require that all relay products be able to receive calls from (in addition to making calls to) any and all relay providers.

The NAD also urges the FCC to retract the informed consent allowance for relay products and services. It is not acceptable for any provider to exploit a specific customer's need for access to telecommunications services by requiring "informed consent" for the practice of blocking calls from other providers. Furthermore, relay providers are not getting informed consent from any and all

[23] Federal Communications Commission Clarifies that Certain Telecommunications relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video relay Service (VRS) May Not be Used as a Video Remote Interpreting Service, Public Notice, DA 05-141 (January 26, 2005).

[24] Ibid.

[25] Ibid.

hearing callers for permission to block their calls (whether directly or through relay) to deaf and hard of hearing customers. Relay providers are also not getting informed consent from deaf and hard of hearing callers for calls made outside the network into the network directly without the use of relay services.

A customer cannot truly give "informed consent" to allow a provider to adjust a "consumer's hardware or software to restrict access to other" providers if there is a financial incentive or withdrawal of benefits related to the consent.

It is generally recognized that true informed consent can only be given if there is no penalty or loss of benefits to which the customer is otherwise entitled, and the consumer or subject may discontinue participation at any time without penalty or loss of benefits to which the customer is otherwise entitled.[26]

The ADA was established to give deaf and hard of hearing individuals the ability and right to access telecommunication networks. Relay providers should not be allowed to demand that customers give up their access rights to and from other providers in exchange for relay products that provide desperately-needed communications access.

The FCC's January 26 ruling also stated that providers may not selectively answer calls from preferred consumers or locations. Providers must answer the calls in the order they are received. Yet current relay providers who block calls from other providers to consumers are in essence establishing a group of preferred customers, rather than allowing calls to be made and answered in order. Relay

[26] The NAD finds it unusual that the FCC utilizes the term "informed consent" in the context of relay services and products. The term is most commonly used in the health, medical and anthropology fields. For example, 45 C.F.R §46.116 (Public Welfare) states that "No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights." "Basic elements of informed consent…[include] a statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled." Numerous other federal regulations essentially define informed consent in the same way. *See e.g.*, (Transportation) 49 C.F.R §11.116; (Agriculture) 7 C.F.R. §1c.116; (Commerce) 15 C.F.R. §27; (Energy) 10 C.F.R. §745.116; (Commercial Practices) 16 C.F.R. §1028.116; (Foreign Relations) 22 C.F.R. §225.116; (Protection of Environment) 40 C.F.R. §26.116; (Judicial Administration) 28 C.F.R. §46.116; (National Defense) 32 C.F.R. §219.116; and (Education) 34 C.F.R. §97.116.

providers should not be allowed to block off a group of customers from making calls to any providers they want. Such blocking is preventing them from complying with the FCC's ruling to answer calls in the order they are received.[27].

It is not, however, enough to require relay providers to use FCC-prescribed standards and cease blocking practices. In order to ensure relay interoperability and compatibility, the FCC should require that video and other Internet relay providers (and any subcontractors or licensors/licensees) open up their networks to callers. This would include opening up directory lists currently used for instant messaging and certain video software. Open directory lists are critical for ensuring that individuals can make and receive calls. Open directory lists are critical for ensuring that individuals can make and receive calls. If deaf and hard of hearing people are in a separate directory from hearing people, there will be more reliance on relay services than is necessary.

If closed networks with non-public directories open, relay providers will continue to exclude certain callers and thereby unfairly give service priorities and preferences to only customers within their closed networks. This blocking of non-preferred customers outside the network has the effect of allowing relay providers to answer calls from preferred consumers or locations — actions explicitly disallowed by the FCC's ruling.

IV. Recommendation: Relay products and services must be interoperable and backwardly compatible in accordance with FCC-prescribed standards.

If the FCC requires that relay products and services be backwardly compatible and interoperable using FCC-prescribed standards, relay services will come closer to fulfilling the functional equivalency mandates of the ADA. The standards will allow relay providers to comply

[27] Relay providers that use proprietary instant messaging products are also practicing a form of blocking, in violation of the FCC ruling, by blocking incoming calls from consumers who use other instant messaging systems. Such blocking has the effect of exercising a preference for consumers who have signed up to utilize a closed network. As a result, consumers who utilize the provider's preferred instant messaging closed network are given priority (contrary to FCC's ruling), while consumers using other instant messaging systems are actually kicked off the list of individuals whose calls will be answered.

with common carrier requirements for providing communication services in a manner that is fair and non-discriminatory. Such standards would also promote the Powell's vision for "Internet freedom," to ensure access to the nation's most advanced communications systems, and ensure that Internet-based relay services remain an option for consumers that can enhance, not impede their communications access.

The FCC-prescribed standards should be flexible enough to allow relay service providers and product developers to promote innovation, research and development, while ensuring compliance with Section 255 requirements. They should not place customers under any obligation to use only one relay provider's services, nor expect them to give up their right to access any providers they want in exchange for sorely-needed relay products. Finally, they should ensure that no consumers are excluded from closed relay service networks and should prohibit relay providers from using any system that treats preferred customers differently from any other customers.

With the FCC-prescribed standards, open directory lists, and anti-blocking rules, customers should be able to make calls to anyone, at anytime. They should also have the equal ability to receive calls from anyone, at anytime, and from anyplace.

VI. Conclusion

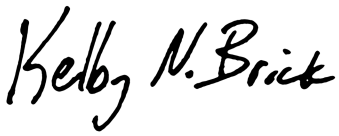
The FCC has always taken a strong position supporting principles of interoperability in other areas it has jurisdiction over. The FCC has also long upheld the principle of competition. If relay services and products are allowed to continue operating in closed and exclusionary networks, the FCC will be relegating deaf and hard of hearing individuals to the status of second-class citizenship with inefficient access and nonfunctional equivalency to the nation's telecommunication network.

Relay products and services should be required to be backwardly compatible and interoperable in accordance with FCC-prescribed standards, and in full compliance with Sections

225, 251 and 255. Existing relay products and services should be retrofitted within 30 days to comply with FCC requirements for interoperability and compatibility. Blocking practices should be prohibited and directory lists should be opened up.

The NAD urges the FCC to move decisively and expeditiously, to make available to all deaf and hard of hearing individuals in the United States a rapid and *efficient* nationwide communication service in the most *efficient* manner. The ADA requires and expects no less.

Respectfully submitted,



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Director, Law & Advocacy
National Association of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910

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